(P8) (P9)

IN THE HIGH COURT OF JUDICATURE OF M.P. AT JABALPUR

W.P. NO. 6117 **/2000**

PETITIONERS : **Commandant, 11th Battalion Vishesh Sashastra Bal, Bhilai M.P.**

2. Upmahanirikshak, Vishesh Shashastra Bal, Bhilai, M.P.

3. Inspector General of Police Vishesh Sashastra Bal, Police Headquarter, Bhopal

- V E R S U S -

RESPONDENTS : Mahendra Singh, S/o Rampal Singh, aged about 36 years, R/o Village Dhongabal, P.O. Ratangaon, Tahsil Mhowganj, District Rewa, M.P.

2. Madhya Pradesh State Administrative Tribunal, through its Registrar, Jabalpur.

OATH COMMISSIONER (Smt. L. D. PATEL B.A. LL.B.) JABALPUR 18/10

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

AFR.

W.P. No. 6117 of 2000

ORDER

HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

Writ Petition No. 6117 of 2000

Commandant 11th Bn. & others

Vs.

Mahendra Singh & anor.

O R D E R

The following order of the Court was passed by R.S. Garg,J.-

By this petition under Article 227 of the Constitution of India, the petitioners seek to challenge the correctness, validity and propriety of the order dated 18.2.2000 passed in O.A.No.1207/89 (Mahendra Singh v. Commandant 11th Battalian); O.A. No.3163/89 (Hemlal Thapa v. Commandant 11th Battalian); and O.A.No. 82/93 (Pooran Bahadur v. Commandant 11th Bn.). This judgment shall dispose of W.P.No.6117/2000, 6119/2000 and 6120/2000 as the above referred Original Applications were disposed of by the common order dated 18.2.2000.

2. The employee in each of the case was employed by the petitioners as a recruit and in accordance with Rule 37 of the Vishesh Sahastra Bal Niyam, 1973 they were required to pass certain trainings. As each of the respondent/recruit could not pass within a period of nine months, the period was extended by six months in accordance with Rule 37 and as each of the employee could not acquire the required proficiency within the extended period, they were discharged from their services. Each of the employee

being aggrieved by the order of discharge/termination issued on 18.2.2000, terminating their services w.e.f. 10.3.1989, filed Original Applications before the State Administrative Tribunal at Jabalpur.

3. In support of their petition, each of the employee submitted that the said Rule 37 which required the employee to attain the required proficiency within the extended period has been differently interpreted by different Commandants and the I.G.P. and as in case of some of the recruits a third opportunity was provided to them, these recruits could not be treated differently, they could not be discharged from service and they were also entitled to third opportunity. In support of their contention they filed the copy of the order dated 20.7.95 passed by I.G., Special Armed Force, Bhilai setting aside the order passed by the Commandant of 33rd Battalion.

4. The present petitioners in their capacity as the respondents submitted before the Tribunal that in accordance with Rule 37 of M.P.Vishesh Sashastra Bal Niyam, 1973 if the recruit does not acquire the required proficiency within nine months or the extended period, then the authority is entitled to remove him from service or discharge him. They accordingly prayed to the Tribunal that the petitions filed by the recruits deserved dismissal.

5. The Tribunal after hearing the parties came to the conclusion that in case of some of the employees/recruits Rule 37 has been differently interpreted and certain persons were retained in service even when they could not attain the required

proficiency in second attempt, therefore, the petitioners were also entitled to be retained in service. Granting their petitions, the Tribunal directed that the said recruits be taken back on duty, but looking to the long break in service and in the peculiar circumstances of the case, the matter relating to grant of back wages shall be dealt with under the discretion of the respondents/ present petitioners, but each of the recruit shall be deemed to be continuous in service for other service benefits. Being aggrieved by the said order passed in favour of each of the recruit, the petitioners i.e. Commandant of 11th Battalion and two others have filed these petitions.

6. Dr.N.K.Shukla, learned Dy. Advocate General, referring to Rules 37 and 38 of 1973 Rules submits that as Rule 37 does not permit any third opportunity in favour of the unsuccessful recruit, in each of the case the recruit was rightly discharge from service. Referring to Rule 38 he submits that a Constable on passing the recruit's test shall be appointed to an active company and no person who has not served for a period of 12 months in an active company shall be eligible for any appointment in special section such as Stores, Armourers. According to him, if Rule 37 does not talk of any third opportunity then grant of an opportunity in favour of some other recruits would not clothe the recruit with such a right nor would confer jurisdiction upon the Tribunal to interfere with the order of discharge.

7. On the other hand, Shri Prashant Mishra learned counsel for the recruits submit-s that Rule 37 if is read in its true perspective would clearly indicate that it is not necessary for the Commandant/ appointing authority to discharge the man from service because the language employed in Rule 37 is that 'if the recruit again fails to pass the recruit's test at the end of the extended period he 'may be' discharged by the Commandant.' Taking shelter under the words "he may be discharged", learned counsel for the recruits submits that it is not mandatory upon the Commandant to discharge the recruit and it would be within the discretion of the Commandant to discharge or retain the recruit in service.

8. The Madhya Pradesh Vishesh Sashastra Bal Adhiniyam, 1968 (No.29 of 1968) received the assent of the Governor on the 25th November, 1968. This Act provides for the constitution and regulation of the Special Armed Force in the State of Madhya Pradesh. Section 3 of 1968 Act provides for constitution of the Special Armed Force. Subsection (2) of Section 3 provides that S.A.F. (Special Armed Force) shall be constituted of such personal and maintained in such manner as may be prescribed. According to Section 4 of the Act, the superintendence, control and administration of the Special Armed Force shall, in accordance with the provisions of the Act and any Rules made thereunder vest in the Inspector General and Assinstant Inspector General as the State Government may authorise in this behalf. Section 27 of the Act confers power upon the State Government to make

rules for carrying out the purpose of the Act. Subsection (2) of Section 27 provides that in particular and without prejudice to the generality of the forgoing provisions such rules may provide for all or any of the matters referred in sub-section (2). Section 27 (2), Clause (c) refers to recruitment, organisation, classification and discipline of members of the subordinate ranks.

9. In accordance with the powers conferred upon the State Government under Section 27, Sub-sections (1) and (2) of the Act, the State Government had made rules known as "The Madhya Pradesh Vishesh Sashastra Bal Niyam, 1973". Chapter IV of the Rules refers to recruitment. Chapter VII of the Rules refers to training. For the purpose of the present petitions, we may refer to Rules 34 to Rule 38 of the said Rules. The said Rules read as under :

> "34. Training Battalions.- The State Government will earmark a few Battalions as Training Battalions where the training of recruits and other officers will be carried out according to the directions of the Police Head-quarters. Besides this the Commandants will be responsible for ensuring the maximum efficiency of their subordinates by organising various courses in their own Battalions. Officers will be liable to be sent within or outside the State in any Training Centres or Institutions for special training as and when required. Each Company of the Battalion will be called and kept at the Head-quarters for at least two months for collective training turn and during this

period the Company will not be called out for any duties outside the Battalion except with the sanction of the Inspector-General of Police.

35. Subject of training for recruits.-Every recruit shall be trained in such subjects as are specified by the Inspector General of Police from time to time.

36. A recruit to be tested by a Committee.- A recruit shall be given training for a period of nine months in a Training Battalion at the end of which he shall be tested by a Committee appointed by the Commandant of the Training Battalion. The test shall be so carried out as to see whether the recruit has obtained proficiency in the subject of training . On his having attained proficiency, he shall be reported fit and on the final orders of the Commandant shall be considered as trained Constable and put in a section in an active Company.

37. Extension of the training period. If the recruit fails to attain the required proficiency within a period of nine months, the period of training may be extended for a further period not exceeding six months unless there are special reasons. If he fails again to pass the recruits test at the end of the extended period he may be discharged by the Commandant.

38. Appointment to an Active Company.- A constable on passing the recruit's test shall be appointed to an Active Company. No person who has not served for a period of 12 months in an Active Company shall be eligible for any appointment in special section such as Stores, Armourers."

10. According to Rule 35 every recruit shall be trained in such subjects as are specified by the Inspector General of Police from time to time. Rule 36

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says that a recruit shall be given training for a period of nine months in a Training Battalion, a test shall be carried out to see whether the recruit has obtained proficiency in the subject of training and on his having attained proficiency he shall be reported fit and on the final orders of the Commandant shall be considered as trained constable and put in a section in an Active Company.

11. If the recruit does not acquire or attained the required proficiency within the period of nine months, then in accordance with Rule 37 the period of training may be extended for a further period not exceeding six months unless there are special reasons. If the recruit fails again to pass the recruit's test at the end of the extended period he may be discharged by the Commandant. Rule 38 says that on passing the recruit's test a constable shall be appointed to an Active Company but no person who has not served for a period of 12 months in an Active Company shall be eligible for any appointment in special section such as Stores, Armourers.

12. Dr. N.K.Shukla, learned Deputy Advocate General, submits that a conjoint reading of Rules 36 and 37 would make it clear that a recruit has to attain the required proficiency within a period of nine months and has to pass the test and if he is unable to pass the test then he may be given an extension of six months and if the period is to be extended beyond six months then special reasons are to be given. According to him a juxtapose

reading of Section 36 and 37 would make it abundantly clear that the 1973 Rules do not talk of a third opportunity. On the other hand, Shri Prashant Mishra, learned counsel for the recruits, submits that a fair reading of Rule 37 would make it clear that the Commandant is not obliged to discharge the recruit and as Rule 37 used the words "he may be discharged", the Commandant can grant third opportunity. He further submits that in view of the interpretation put forth by Inspector General, S.A.F. Bhilai a third opportunity could always be granted.

13. Rule 36 quoted above clearly stipulates that a recruit shall be given training for a period of nine months and at the end of the said training he shall be tested by a committee appointed by the Commandant of the training battalion. The test shall be so carried out as to see whether the recruit has obtained proficiency in the subject of training. It is only on a recruit attaining proficiency that he shall be reported fit and on the final orders of the Commandant he shall be considered as trained constable and put in a section in an Active Company. Rule 37 is virtually corollary to Rule 36. It provides yet another opportunity to a recruit who fails in the test and could not show that he attained the required proficiency in the subject of training. According to Rule 37, the period of training may be extended for a further period not exceeding six months unless there are special reasons. The words "unless there are special reasons" are to be read with the words "not exceeding six months". The exigencies may require the authorities

to fix the extended period beyond the period of six months. In any case, after the recruit fails in the first test he would be given another chance and within the extended period he has to pass the test and prove that he had attained the required proficiency in the subject of training.

14. The principles of ejus dem generis would make it clear that the words "unless there are special reasons" are to be read with the 'period of six months' and not with the opportunity. According to Shri Prashant Mishra, on second failure the recruit is not required to be terminated or discharged by the Commandant because Rule 37 provides that the recruit 'may be discharged by the Commandant'. He submits that use of the word 'may' does not make the Rule mandatory and does not oblige the Commandant to discharge the recruit. Dr. Shukla, on the other hand, submits that though the word 'may' has been used in the rule, but the word has to be read as 'shall'.

15. A perusal of Rule 37, especially the words "he may be discharged by the Commandant" would on cursory reading show that it is not obligatory upon the Commandant to discharge the recruit on his second failure, but a proper reading/deep probe into Rule 37 and the intention of the legislature behind Rule 37 would make it clear that though the word 'may' has been used but it has been used as giving a mandate against the Commandant. Rule 37 talks of extension of the training period. The period can be extended for six months, or more under special circumstances, and if the rule does not say that on second failure the training period

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can further be extended then the Commandant cannot continue such a recruit in the training. The word 'may' has been used to show an honour or respect to the Commandant but if Rule 37 does not talk of the second extension or third opportunity then in case of the second failure the Commandant has no authority, right or power to grant second extension or require the recruit to pass the third test. The Commandant on second failure of the recruit has to discharge the recruit. In our considered opinion, the words 'he may be discharged' are to be read in the context in which they are used. Dr. Shukla though has referred to Rule 38, but in our opinion, the same has no relevance at this stage because we are required to consider the effect and impact of Rule 36 and Rule 37 of 1973 Rules.

16. Chapter IX of 1973 Rules relates to discipline. Rule 47 provides for procedure for awarding punishment. Rule 48 talks of powers of punishment which could be exercised by the officers of various grades. Rule49 mandates that punishments are to be entered in orderly Room register and service roll. Rule 50 talks of right of appeal. An officer to whom any punishment has been awarded shall have a right of appeal to the D.I.G. Rule 51 says that the matters of departmental punishment, and appeals and petitions against departmental punishments shall be governed by the provisions laid down in Rules 262 to 275-A of the M.P. Police Regulations.

17. At this stage it would be necessary to refer to the order dated 20.7.1995 passed by the

Inspector General, Vishesh Sashastra Bal, Bhilai in case of as many as 10 persons. The said order shows ~~says~~ that the Inspector General had exercised ~~his~~ powers conferred upon him under Police Regulation No.270(1). Police Regulation 270 gives the revisional powers either on an application or suo motu to the authority superior to the authority making the order. Regulation 270 finds place in Chapter X of the Police Regulations. Regulation 262 refers to the appeals. Such an appeal may be filed by any officer against whom an order has been passed under Regulation 214. Police Regulation 214 finds place in Chapter VIII of the M.P. Police Regulations and relates to the punishments and their kinds. According to Police Regulation 270, the revising authority may for reasons to be recorded in writing exonerate, remit, vary or enhance the punishment imposed or may order a fresh enquiry or the taking of further evidence in the case; provided that it shall not vary or reverse any order unless notice has been served on the party interested and opportunnity given to them for hearing. The order passed by the Inspector General, ~~after~~ taking shelter under Police Regulation 270, cannot be approved. Chapter X of Police Regulations refers to the appeals by those persons against whom some punishment has been awarded. Rule 51 of 1973 Rules read with Rule 50 would also show that right of appeal is given to a person against whom some order awarding punishment has been made. In the present case, no authority, howsoever low or high, has passed any order awarding any punishment to the recruits. It is not even the case of the recruits that on

award of some punishment their services were terminated or they were discharged from the duties. In fact, the order of the I.G. is not in accordance with law.

18. We have been told that number of the authorities have been exercising power conferred upon them under Police Regulation 270 and granting third opportunity to the recruits. We make it clear that Police Regulation 270 cannot overrule Rule 37 of 1973 Rules, firstly because Rule 37 does not talk of any punishment but talks of a situation where a recruit is to be discharged on his not attaining the proficiency, and secondly because Police Regulation 270 applies to a case where a particular punishment has been awarded to a person and the authority wants to exercise the revisional powers. In our considered opinion, Rule 37 of 1973 Rules is final and cannot be over-shadowed by any authority by exercising the appellate or revisional powers. The discharge of the person, if the law permits, can be challenged before the competent authority/forum on the grounds of illegality, malafides or such, but interference in such a discharge order cannot be made on the ground that such discharge tantamounts to a punishment. As in cases of certain recruits a third opportunity was given, we are of the view that the Tribunal was not unjustified in granting third opportunity to these recruits. We should not be understood to mean that for all the times to come we are directing that Rule 37 may be loosely interpretated and third opportunity to pass the test can be granted by the concerned authorities.

The interpretation made by us is final . In these matters we do not propose to interfere because in case of certain persons the Inspector General, S.A.F. after exercising his discretion granted third opportunity to some recruits. When the respondents are submitting before this Court that they be treated equally and the Tribunal directed that they be treated equally, then it would not be necessary for us to interfere in the matter. We, however, make it clear that the opportunity given in favour of the respondents/recruits is simply on the ground of parity and not on the interpretation of law.

19. At this stage, learned counsel for the petitioners submits that if the document on which the recruits had placed reliance is to be used in their favour, reliefs in terms as granted by the Tribunal could not be granted in favour of the respondents/recruits. Shri Prashant Mishra, learned counsel for the recruits was unable to contend anything contrary to the submissions made by the learned Deputy Advocate General. Reliefs granted in favour of the recruits are modified to the following extent :

(a) The recruits/respondents shall be taken back into service ;

(b) Looking to their long break in service, the matter of grant of back wages shall be within the discretion of the petitioners who shall decide the same in accordance with rules ;

(c) The respondents recruits after they are taken back in service shall be given training for a period of six months in accordance with Rule 37 and on expiry of the said period they shall be required to pass the test to be held by the authority in accordance with Rule 36. If this time the recruits fail in passing the test or in showing that they have attained the required proficiency in the subject the Commandant shall be entitled to pass orders in accordance with Rule 37 and discharge the recruits from service.

20. The petitions are disposed of with the aforesaid directions. In the circumstances of the case parties shall bear their own costs.

Sd/-
Chief Justice

Sd/-
R.S. Garg
Judge

27.3.2001

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